

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

**Introduced**

### **House Bill 2221**

By Delegates Westfall, Kelly, Steele, Shamblin,

Hillenbrand, Kump and Garcia

[Introduced January 11, 2023; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §38-10-4 of the Code of West Virginia, 1931, as amended, relating to  
 2 bankruptcy; correcting an erroneous term; excluding life insurance proceeds paid to the  
 3 debtor as a beneficiary, not to exceed \$100,000; excluding any annuities, other than those  
 4 annuities included in §38-10-4(i)(5), which are paid to the debtor as a beneficiary, not to  
 5 exceed \$20,000 per year in value; and, excluding any annuities or life insurance policies  
 6 owned by the debtor which are payable to someone other than the debtor, including any  
 7 applicable cash surrender value, from attachment by creditors in a bankruptcy proceeding.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 10. FEDERAL TAX LIENS; ORDERS AND DECREES IN BANKRUPTCY.**

**§38-10-4. Exemptions of property in bankruptcy proceedings.**

1 Any person who files a petition under the federal bankruptcy law may exempt from property  
 2 of the estate in a bankruptcy proceeding the following property:

3 (a) The debtor's interest, not to exceed \$35,000 in value, in real property or personal  
 4 property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that  
 5 owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot  
 6 for the debtor or a dependent of the debtor: *Provided*, That when the debtor is a physician licensed  
 7 to practice medicine in this state under §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, and has  
 8 commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical  
 9 professional liability action, if the physician has current medical malpractice insurance in the  
 10 amount of at least \$1 million for each occurrence, the debtor physician's interest that is exempt  
 11 under this subdivision may exceed \$35,000 in value but may not exceed \$250,000 per household.

12 (b) The debtor's interest, not to exceed \$7,500 in value, in one motor vehicle.

13 (c) The debtor's interest, not to exceed \$400 in value in any particular item, in household  
 14 furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical  
 15 instruments that are held primarily for the personal, family, or household use of the debtor or a

16 dependent of the debtor: *Provided*, That the total amount of personal property exempted under  
17 this subdivision may not exceed \$8,000.

18 (d) The debtor's interest, not to exceed \$1,000 in value, in jewelry held primarily for the  
19 personal, family, or household use of the debtor or a dependent of the debtor.

20 (e) The debtor's interest, not to exceed in value \$800 plus any unused amount of the  
21 exemption provided under subdivision (a) of this subsection in any property.

22 (f) The debtor's interest, not to exceed \$1,500 in value, in any implements, professional  
23 books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

24 (g) Any ~~unmeasured~~ unmatured life insurance contract owned by the debtor, other than a  
25 credit life insurance contract.

26 ~~(h) The debtor's interest, not to exceed in value \$8,000 less any amount of property of the~~  
27 ~~estate transferred in the manner specified in 11 U.S.C. § 542(d), in any accrued dividend or~~  
28 ~~interest under, or loan value of, any unmeasured life insurance contract owned by the debtor under~~  
29 ~~which the insured is the debtor or an individual of whom the debtor is a dependent~~

30 (†) (h) Professionally prescribed health aids for the debtor or a dependent of the debtor.

31 (†) (i) The debtor's right to receive:

32 (1) A Social Security benefit, unemployment compensation, or a local public assistance  
33 benefit;

34 (2) A veterans' benefit;

35 (3) A disability, illness, or unemployment benefit;

36 (4) Alimony, support, or separate maintenance, to the extent reasonably necessary for the  
37 support of the debtor and any dependent of the debtor;

38 (5) A payment under a stock bonus, pension, profit sharing, annuity, or similar plan or  
39 contract on account of illness, disability, death, age, or length of service, to the extent reasonably  
40 necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in

41 an individual retirement account, including a simplified employee pension regardless of the  
42 amount of funds, unless:

43 (A) The plan or contract was established by or under the auspices of an insider that  
44 employed the debtor at the time the debtor's rights under the plan or contract arose;

45 (B) The payment is on account of age or length of service;

46 (C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, or 409  
47 of the Internal Revenue Code of 1986; and

48 (D) With respect to an individual retirement account, including a simplified employee  
49 pension, the amount is subject to the excise tax on excess contributions under Section 4973  
50 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions,  
51 regardless of whether the tax is paid.

52 ~~(k)~~ (j) The debtor's right to receive or property that is traceable to:

53 (1) An award under a crime victim's reparation law;

54 (2) A payment on account of the wrongful death of an individual of whom the debtor was a  
55 dependent, to the extent reasonably necessary for the support of the debtor and any dependent of  
56 the debtor;

57 ~~(3) A payment under a life insurance contract that insured the life of an individual of whom~~  
58 ~~the debtor was a dependent on the date of the individual's death, to the extent reasonably~~  
59 ~~necessary for the support of the debtor and any dependent of the debtor~~

60 All life insurance proceeds paid to the debtor as a beneficiary, not to exceed \$100,000; any  
61 annuities, other than those annuities included in §38-10-4(i)(5), which are paid to the debtor as a  
62 beneficiary, not to exceed \$20,000 per year in value; or any annuities or life insurance policies  
63 owned by the debtor which are payable to someone other than the debtor, including any applicable  
64 cash surrender value.

65 (4) A payment, not to exceed \$15,000 on account of personal bodily injury, not including  
66 pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of

67 whom the debtor is a dependent;

68 (5) A payment in compensation of loss of future earnings of the debtor or an individual of  
69 whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the  
70 debtor and any dependent of the debtor;

71 (6) Payments made to the prepaid tuition trust fund or to the savings plan trust fund,  
72 including earnings, in accordance with §18-30-1 *et seq.* of this code on behalf of any beneficiary.

73 ~~(j)~~ (k) Solely for the purpose of applying the provisions of 11 U.S.C. § 522(b)(2) in a federal  
74 bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law, an  
75 individual debtor domiciled in this state may exempt from property of the debtor's bankruptcy  
76 estate the property specified under 11 U.S.C. § 522(d).

77 ~~(m)~~ (l) The amendments made to this section during the 2021 regular session of the  
78 Legislature, as amended during the first extraordinary session of the Legislature, 2021, shall apply  
79 to bankruptcies filed on or after the effective date of those amendments.

NOTE: The purpose of this bill is to exclude certain life insurance proceeds and contractual instruments from attachment during bankruptcy proceedings.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.